

THE INTEGRATION PROCESS OF BOSNIA AND HERZEGOVINA TO THE EU: 14 PRIORITIES FROM THE OPINION OF THE EUROPEAN COMMISSION 4 YEARS LATER

Overview of the implementation of legislative and institutional reforms in order to fulfill 14 key priorities that were set as a condition for further progress of BiH to the EU integration process.

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The views and opinions expressed in the Analysis do not necessarily reflect the views of Sweden.

Summary

Four years after the European Commission adopted the Opinion on Bosnia and Herzegovina's application for EU membership, the authorities in BiH have not made progress in the implementation of 14 key priorities that were set as a condition for BiH's further progress in the EU integration process. Based on Transparency International's analysis in Bosnia and Herzegovina, only one priority has been fully implemented and it refers to the functioning of the Parliamentary Committee for Stabilization and Association, which was established but did not meet in the previous period, while in five priorities, the implementation started partially.

Key reforms of the legal framework set in the priorities, relating to the improvement of electoral legislation, the Law on the HJPC and the reform of the Constitutional Court of BiH, the Law on Courts, anti-corruption laws, such as the law on conflict of interest and the protection of corruption whistleblowers, have been awaiting adoption for years. On the other hand, reforms of the institutional framework regarding the professionalization of the civil service, cooperation between law enforcement agencies, improvement of efficiency in the prosecution of corruption and organized crime and depoliticization and restructuring of public enterprises, have hardly even begun.

In some segments, there has even been a setback, in the form of proposing solutions that are aimed at restricting human rights and freedoms, especially when it comes to freedom of speech and expression and freedom of association, and in the segment of the coordination functioning in the matter of EU integration, as well as ensuring legal certainty in terms of the division of competences between levels of government.

Namely, the latest initiatives in the direction of not applying the decisions of the Constitutional Court, contesting jurisdiction, and vetoing and blocking the fulfillment of priorities, certainly call into question not only the readiness to implement priorities but also the complete institutional order in the country.

Introduction

Bosnia and Herzegovina's application for EU membership was submitted in February 2016. The European Commission adopted the Opinion (*Avis*) on Bosnia and Herzegovina's application for EU membership on May 29, 2019, in which, among other things, it was stated that "*the Commission asked Bosnia and Herzegovina a total of 3,897 questions on all policies relevant to the integration process in EU*".

It took the country 14 months to answer the first 3,242 questions and 8 months to answer the additional 655 questions.

Despite the established coordination mechanism for issues concerning the EU, the authorities could not agree on providing answers to 22 questions: 1 on political criteria, 4 on regional policy and 17 on education policies.

In conclusion, the Opinion emphasized that BiH does not sufficiently meet the criteria related to the stability of institutions that guarantee democracy, the rule of law, respect for human rights and the protection of minorities, set by the European Council in Copenhagen in 1993.

In this regard, the country should devote considerable efforts to sufficiently meet such criteria by strengthening its institutions to guarantee democracy, the rule of law, human rights and the respect and protection of minorities.

As stated in the Opinion, The European Commission believes that in order to open negotiations for the accession of Bosnia and Herzegovina to the European Union, BiH will have to thoroughly improve its legislative and institutional framework in order to ensure the fulfillment of 14 key priorities, which are distributed by areas.

In June 2022, the EU Council confirmed its readiness to grant candidate status to Bosnia and Herzegovina, and invited the European Commission to report on the fulfillment of the 14 priorities identified in the Opinion, with a special focus on those that represent a significant set of reforms.

Despite the fact that Bosnia and Herzegovina has not implemented the most significant reforms, the Commission recommended, in October 2022, that the EU Council grants Bosnia and Herzegovina candidate status, but asked that the following steps are to be taken, which actually derive from the previously set 14 priorities from the European Commission Opinion from 2019:

- It is a priority to adopt amendments to the existing Law on the High Judicial and Prosecutorial Council
- Adopt the new Law on the High Judicial and Prosecutorial Council and adopt the Law on the Courts of Bosnia and Herzegovina
- Adopt the Law on Prevention of Conflict of Interest

- Take decisive steps to strengthen the prevention and fight against corruption and organized crime
- Decisively improve work on ensuring effective coordination at all levels when it comes to border and migration management capacities, as well as ensuring the functioning of the asylum system
- Ensure the prohibition of torture, especially by establishing a national preventive mechanism against torture and ill-treatment
- Guarantee freedom of expression, media and protection of journalists, especially by ensuring appropriate legal proceedings in cases of threats and violence against journalists and media workers
- Ensure results in functioning of the coordination mechanism on EU issues at all levels, including the development and adoption of the national program for the adoption of the EU acquis.

The Council of the EU, then, following the conclusions of the Council of June 23-24, 2022, and in the light of the Commission's subsequent recommendation of October 12, 2022, recommends that Bosnia and Herzegovina is granted the status of a candidate country, with confirmation by the European Council, but also the assumption that the steps mentioned in the Commission's recommendation should be taken in order to strengthen the rule of law, the fight against corruption and organized crime, migration management and fundamental rights.

It was especially emphasized that in the current geopolitical context, there is an urgent need for the country to move forward on its path to the EU, especially through the fulfillment of all 14 key priorities for the opening of EU accession negotiations established in the Commission's Opinion on BiH's request for EU membership.

In the Council's recommendation preceding the final decision, the Council *"notes with concern the overall limited progress in reforms, but welcomes the recent steps taken, including: the adoption of amendments to the Law on Public Procurement, the adoption of a comprehensive strategy on public finance management at all levels of government, the appointment of the four missing judges in the Constitutional Court of the Federation of BiH, the ratification of several agreements, including the Horizon and Creative Europe programs and the Civil Protection Mechanism of the European Union, as well as progress in the operationalization of cooperation with EUROPOL and the adoption of the strategy for the fight against terrorism."*

It is further states that Bosnia and Herzegovina should undertake further constitutional and electoral reforms in order to ensure equality and non-discrimination of all citizens, especially through the implementation of judgments of the European Court of Human Rights (ECtHR), and reiterated is the call for an inclusive process of constitutional and electoral reforms, through true dialogue and in accordance with European standards, in order to eliminate all forms of inequality and discrimination in the electoral process.

The Council emphasizes that no legislative or political step should be taken making the implementation of the "Sejdić-Finci" judgment and related judgments of the European Court of Human Rights more challenging or causing further deeper divisions. While concerned about the lack

of progress, the Council further encourages Bosnia and Herzegovina to address reforms aimed at improving the country's legislative and institutional framework to align with the requirements of EU membership, including the development and adoption of a national program for the adoption of the EU *acquis*.

In December 2022, based on the previous recommendations of the Council and the Commission, the Council grants candidate status to Bosnia and Herzegovina.

BiH in Relation to the Countries of the Region

Every year, the European Commission for the 10 countries aspiring to join the EU evaluates 33 areas of politics - laws, institutions, policy implementation - into which the accession negotiations are divided. According to the report of the *European Stability Initiative*, three findings stand out when analyzing and comparing recent assessments. First, Montenegro, Serbia, North Macedonia and Turkey are ahead of Ukraine and Georgia in terms of readiness. Moldova is roughly at the same level as Bosnia and Herzegovina, and these two countries have the worst indicators.

Second, the countries that have been in this process for the longest time have slowed down in recent years – and Turkey has gone backwards. Third, the key focus on the foundations of the rule of law, introduced for good reasons many years ago, is not delivering results.

Analyzing the level of preparedness of countries in relation to 33 chapters and average grades, according to the ESI analysis, Bosnia and Herzegovina has the lowest level of preparedness in relation to other countries that are in the process of joining. Taking the example of Montenegro and Serbia, where the Commission proposed that some chapters should be temporarily "closed" when a "good level of preparedness" is achieved (3), the assumption is that in order to join the EU - or to join its single market even earlier – countries must achieve a good level of preparedness in each chapter: at least a score of 3 in 33 chapters: a total score of at least 99.

In this sense, BiH has 0.7 in the overall preparedness level compared to the average rating of 3.

EARLY PHASE	0
CERTAIN LEVEL OF PREPAREDNESS	1
MODERATELY PREPARED	2
GOOD LEVEL OF PREPAREDNESS	3
WELL ADVANCED	4
COMPLETED?	5

ESTIMATES OF THE EUROPEAN COMMISSION ON 33 CHAPTERS (2022/23)

COUNTRY	AVERAGE LEVEL (0 - 4)
<i>AVERAGE "GOOD PREPAREDNESS"</i>	<i>3</i>
Montenegro	<i>2.1</i>
Serbia	<i>2.0</i>
North Macedonia	<i>2.0</i>
Turkey	<i>1.9</i>
Albania	<i>1.6</i>
Ukraine	<i>1.2</i>
Georgia	<i>1.1</i>
Kosovo*	<i>0.9</i>
Moldova	<i>0.7</i>
Bosnia and Herzegovina	<i>0.7</i>

In relation to individual chapters, the cross-section of preparedness of all countries is as follows:

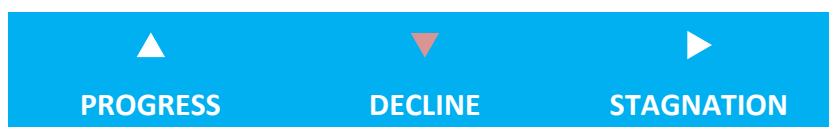
EUROPEAN COMMISSION ESTIMATES FOR 33 CHAPTERS (2022/23)

	CHAPTERS	MN	SRB	N.MK	TUR	ALB	UKR	GEORG	KOS*	MLD	BIH
1	Free movement of goods	2	2	2	3	1,5	2	1	1	1	0
2	Free movement of workers	1	2	0	0	1	0	0	1	0	1
3	Establishment and provision of services	2	2	2	0	2	1	2	2	1	0
4	Free movement of capital	2	2	2	2	2	1	2	1	1	2
5	Public procurement	2,5	2	2	2	2	1	1	1,5	0	1
6	Commercial law	3	3	3	4	2	1	1	1	0	1
7	Intellectual property	3	3	2	3	1,5	0	1	1	1	2
8	Competition policy	2	2	2	1	1,5	1	0	1	1	1
9	Financial services	2	2	2	3	2	1	1	2	0	1,5
10	Digital media	2	2	2	1	2	2	1	1	1	0
11	Agriculture, research and development	2	1	2	1	1	0	0	1	0	0
12	Food safety	2	2	3	1	1	2	1	1	1	1
13	Fishing	1	2	2	2	1,5	0	1	0	0	0
14	Transport policy	2,5	3	2	2	1	1	1	0	1	1
15	Energetics	3	2	2	2	2	3	1	1	1	0
16	Tax policy	2	2	2	2	2	1	1	1	0	1
17	Economic and monetary system	2	2	2	1	2	2	2	2	1	0
18	Statistics	2	2	2	2	2	1	1	1	1	0
19	Social protection, employment	1	2	2	1	1	0	1	0	0	1
20	Entrepreneurship and industrial policy	2,5	2	2	2	2	1	2	2	1	0
21	Trans-European networks	2,5	2	3	4	1	1	1	1	1	1
22	Regional policy	2	2	2	2	2	1	0	0	0	0
23	Justice and protection of rights	2	1	1,5	0	1,5	n/a	n/a	0,5	n/a	1
24	Public order and peace	2	1	2	2	1,5	1	1	0,5	1	1
25	Science and research	3	3	3	4	1	2	2	0	2	1
26	Education, culture	3	3	2	2	2	1	2	0	1	0
27	Environment, climate	1	1	1	1	1	0	0	0	0	5
28	Consumer protection	2	2	2	3	0	1	1	0	1	0
29	Customs Union	2	3	3	3	2	3	2	2	1	1
30	International relations	3	2	2	2	3	3	2	0	2	1
31	External, security and defense politics	3	2	3	1	3	3	2	n/a	2	1
32	Financial control	2	2	2	3	2	0	1	1	0	1
33	Finance and budget	1	1	0	1	1	0	0	n/a	0	0
	Total*	70,0	67,0	66,5	63,0	54,0	37,0	35,0	26,5	23,0	22,0
	Average (0-4)	2,1	2,0	2,0	1,9	1,6	1,2	1,1	0,9	0,7	0,7

* Kosovo was rated for 31 chapters, Georgia, Moldova and Ukraine for 32 chapters.

**Grade: early stage (0), certain level of preparedness (1), moderately prepared (2), good level of preparedness (3), well advanced (4).

Cross-Section of Progress in Fulfilling Priorities



Democracy/Functionality

PRIORITY		COMPLETED	
Democracy / Functionality	1	Ensure that the elections are conducted in accordance with European standards by implementing the relevant recommendations of the OSCE/ODIHR and the Venice Commission, ensure transparency of political party funding and hold local elections in Mostar.	1/3 ▶
	2	Ensure visible results when it comes to the functioning of the coordination mechanism on issues related to the EU at all levels, including the preparation and adoption of the national program for the adoption of the acquis.	0 ▼
	3	Ensure the proper functioning of the Parliamentary Committee for Stabilization and Association.	1 ▶
	4	Thoroughly improve the institutional framework, including at the constitutional level, in order to:	0
	a)	ensure legal certainty in terms of division of competences between levels of government;	▼
	b)	introduce a substitution clause to enable the country to temporarily exercise the competences of other levels of government after accession, in order to prevent and eliminate violations of EU law;	▶
	c)	guarantee the independence of the judiciary, including its independent institution (HJPC);	▶
	d)	reform the Constitutional Court, including resolving the issue of international judges and ensuring the implementation of its decisions;	▼
	e)	guarantee legal certainty, including through the establishment of a judicial body entrusted with ensuring consistent interpretation of law throughout Bosnia and Herzegovina;	▶
	f)	ensure the equality and non-discrimination of citizens, especially following the judgment of the European Court of Human Rights in the Sejdic and Finci case;	▼
	g)	ensure that all administrative bodies in charge of implementing the acquis are based solely on professionalism and that the right of veto in the decision-making process is removed, in accordance with the acquis;	▶
	5	Take concrete steps to promote an environment suitable to reconciliation in order to overcome the legacy of war.	0 ▶

- 1. ENSURE THAT THE ELECTIONS ARE CONDUCTED IN ACCORDANCE WITH EUROPEAN STANDARDS BY IMPLEMENTING THE RELEVANT RECOMMENDATIONS OF THE OSCE/ODIHR AND THE VENICE COMMISSION, ENSURE THE TRANSPARENCY OF POLITICAL PARTY FUNDING AND HOLD LOCAL ELECTIONS IN MOSTAR.**

Amending the Electoral Law and Ensuring the Transparency of Political Party Funding

Apart from the imposed changes to the Electoral Law and the Constitution of the Federation of BiH by the High Representative of BiH, since the publication of the 2019 Opinion, there has been no improvement of the Electoral Law and the Law on Political Party Funding, especially in terms of fulfilling the relevant recommendations of the OSCE/ODIHR and the Venice Commission. The amendments to the Electoral Law imposed by the High Representative in July 2022, although presented as a package for the improvement of integrity, as they relate to the prevention of seats trading in electoral committees, the misuse of public resources for electoral purposes and the increase of sanctions, only partially addressed mentioned matter, and did not significantly improve the integrity of the electoral process.

This was shown by all the relevant reports on elections implementation, and independent observers in the analysis of the 2022 General Elections reported that of the 4,337 members of the electoral committees that were the subject of the analysis carried out in almost all municipalities in BiH, over 17%, or more precisely 747 cases, were related to a potential exchange of seats in electoral committees. Observers also warned of collusion between local electoral committees and political parties in order to manipulate the distribution of seats in electoral committees.

When it comes to the abuse of public resources, the changes only treated the behavior of public officials, while the entire range of misuse of financial resources for the purpose of pre-election promotion or incitement to vote was not treated at all by the aforementioned changes.

Furthermore, the changes to the Election Law and the FBiH Constitution imposed by the High Representative on election day itself, after the polling stations were closed, further complicated the process of implementation of the results and further deepened the political crisis and, as will be seen later, did not even resolve the issue of the government's blockade.

On the other hand, in addition to the fact that the changes were defined without any public consultation, the very fact that they were imposed after the citizens had already voted called into question the will of the voters, while on the other hand, the adequate representation of all groups was called into question, and at the very end the possibility of implementation, given the different interpretations of the provisions and the lack of supporting acts that would remove doubts.

Given all of the above, and the fact that there were no activities to improve the Law on the Political Party Funding, it cannot be considered that the conditions relating to the conduction of elections, in accordance with the relevant standards and recommendations, have been met. In addition, the strengthening of the interventionism of the Office of the High Representative is not compatible with the integration process of BiH, and represents a move away from fulfilling the conditions required for membership.

Namely, in 2005, the Venice Commission emphasized in its opinion¹ that, although the Bonn powers of the high representative were useful in terms of post-war Bosnia and Herzegovina, such an arrangement is essentially incompatible with the democratic character of the state and the sovereignty of Bosnia and Herzegovina, especially because these powers can be exercised without due process or judicial oversight. In this regard, the European Commission stated in the Analytical Report with the Opinion that, therefore, this type of supervision is incompatible with BiH's membership in the European Union.²

Holding local elections in Mostar still remains as the only part of the priority that has been fulfilled, based on the political agreement on June 17, 2020, which led to the adoption of legislative amendments in July 2020, enabling a call for elections in Mostar.

FULLFILLED: 1/3

2. ENSURE VISIBLE RESULTS IN THE FUNCTIONING OF THE COORDINATION MECHANISM ON EU-RELATED ISSUES AT ALL LEVELS, INCLUDING THE PREPARATION AND ADOPTION OF THE NATIONAL PROGRAM FOR THE ADOPTION OF ACQUIS.

According to the Stabilization and Association Agreement, which was signed in 2008 and entered into force in 2015, Bosnia and Herzegovina had to develop a program for the adoption of EU *acquis* (legislation), i.e. an integration program. According to the European Commission, in the absence of such a program, Bosnia and Herzegovina cannot sufficiently ensure the harmonization of legislation at all levels with the legal procedures because the distribution of responsibilities is unclear.

Bosnia and Herzegovina has not yet adopted the national program for the adoption of the legal procedures EU (*acquis*), and since 2019 preparatory activities have been conducted to develop this program. Coordination between bodies at different levels of government is weakened, moreover, because the Parliamentary Forum for European Integration held a meeting in February 2021, after not meeting for a long time.

The annual work programs of governments at all levels are not sufficiently correlated with the implementation of the SAA and other relevant obligations of the EU; cooperation between different governments in the approximation of the *acquis* and the implementation of the law is not ensured. Cantons have limited institutional capacity to deal with the approximation, implementation and enforcement of EU law.

¹ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)004-e)

² <https://neighbourhood-enlargement.ec.europa.eu/system/files/2019-05/20190529-bosnia-and-herzegovina-analytical-report.pdf>

At the beginning of 2020, the Presidency of BiH tasked the Council of Ministers to start creating a methodology for developing an EU integration program, and in May 2020, the Board for European Integration tasked the Commission for European Integration at the Parliamentary Assembly of BiH to prepare the methodology for developing the program for the integration of BiH in the European Union by June 30, 2020.

The preparation of the Program for the Integration of Bosnia and Herzegovina into the European Union started in October 2020 with a *kick-off* meeting where the Methodology for its preparation and the accompanying activity plan were presented online to the members of the Commission for European Integration and the leadership of the working groups for European Integration. The integration program should include an action plan for harmonizing the regulations in BiH with the EU regulations and an action plan for the implementation of the recommendations of the European Commission, as well as a review of administrative capacities, and will cover a planning period of four years.

36 working groups and the Commission for European Integration and other bodies of the coordination mechanism should have been involved in document drafting in five phases, and the deadline for its completion was 15 months. However, more than three years later, the Program was not created.

According to the report of the Directorate for European Integration of Bosnia and Herzegovina from March 2023, based on the analysis of the activities carried out so far in the preparation of the Program, critical deviations from the planned work dynamics were noted. As stated, in the working groups for European integration, which are operative bodies in the coordination system and bearers of key activities in the development of the Program, a different level of commitment of members of the working groups, including chairmen and deputies, was noticeable - it is stated in the document of the Directorate for European Integration of BiH.

It was especially emphasized that "*the worryingly low level of motivation and responsibility of the representatives of institutions from all levels of government in the working groups can be noted, which led to breaking the deadlines set by the Board and the Commission for European Integration.*" The working groups for European integration did not adhere to the deadlines defined in the activity plans, even though they were long enough and took into account the difficult circumstances in the preparation of the document caused by the Covid 19 pandemic. Therefore, huge delays and stoppages in the preparation of the Integration Program are not justified - the document states.

In 2022 EU Report for Bosnia and Herzegovina, it was emphasized that coordination regarding EU issues has come to a standstill, due to political obstructions and questioning of EU key priorities by the Republic of Srpska, and that there has been a complete suspension of dialogue with EU. Due to the blocking of the institutions, there was a suspension in the activities of the joint bodies responsible for the implementation of the Stabilization and Association Agreement (SAA), and the preparatory documents were not adopted either, which led to a delay in the implementation of the SAA.

FULLFILLED: 0

3. ENSURE THE PROPER FUNCTIONING OF THE PARLIAMENTARY COMMITTEE FOR STABILIZATION AND ASSOCIATION.

Although the Parliamentary Committee for Stabilization and Association was formed in 2015, the Committee did not adopt its rules of procedure because some delegates from Bosnia and Herzegovina insisted on including provisions on the ethnic principle of voting, which is not in accordance with European standards.

The new Parliamentary Committee for Stabilization and Association was formed on July 7, 2020 by the Decision on Appointing Members of the Parliamentary Assembly of BiH to this Parliamentary Committee, and the Committee's Rules of Procedure were also adopted. The rules of procedure represent a compromise solution according to which a two-thirds majority of parliamentarians from BiH would be needed to make decisions "due to the constitutional system of BiH and the way of decision-making in BiH", although the European Parliament requested that the majority voting.

The first session was held in 2021 after the adoption of the Rules of Procedure, however, no sessions were held in 2022. Even though all conditions were met in practice, its adequate functioning was not ensured.

The Parliamentary Assembly of Bosnia and Herzegovina, in its new convocation, passed the Decision on the appointment of members only at the 6th session of the House of Representatives, held on April 19 and 24, 2023, and at the 5th session of the House of Peoples, held on May 31, 2023, passed the Decision on the appointment of members of the Parliamentary Assembly of BiH to the Parliamentary Committee for Stabilization and Association between PA BiH and the European Parliament.

FULLFILLED: 1

4. THOROUGHLY IMPROVE THE INSTITUTIONAL FRAMEWORK, INCLUDING AT THE CONSTITUTIONAL LEVEL, IN ORDER TO:

a) ensure legal certainty in terms of division of competences between levels of government;

As stated in the Analytical Report, a clear distribution of responsibilities and enhanced cooperation between different levels of government will be crucial for the successful management of the next phases of EU integration.

The only step taken to strengthen cooperation between different levels of government is the adoption of the Priority Plan for Parliaments in BiH to accelerate the process of European integration in April 2021, which contains two segments: the Plan of Priorities for Parliaments in BiH to accelerate the process of European integration, as well as the Joint Statement of Board Members of PA BiH, Parliament of FBiH, National Assembly of the Republic of Srpska and Assembly of Brcko District on support for this plan.

However, this plan is only a declarative statement by the representatives of the legislative authority on the functioning of the cooperation mechanisms for the holders of the legislative authority, which refers to conferences, forums, cooperation and other activities in the context of EU integration. The plan also focuses on calls to the executive power (primarily the Council of Ministers, as well as governments) to ensure, through supervision, the implementation of the comprehensive state program of European integration, coordination of various bodies, strengthening the role of parliaments and raising public awareness in this process.

The Committee for European Integrations, which was formed in accordance with the Decision on the Coordination System of European Integrations in BiH in 2016, in the period since the issuance of the Opinion, according to publicly available data, met only once in May 2020, after which there is no information available about the meetings of this body.

A harmonized system for assessing compliance of regulations with the *acquis* between different levels of government has not yet been established. No progress has been made when it comes to coordination between different levels of government in terms of public policies, including those concerning the EU integration process, which is demonstrated by the failure to adopt the national integration program and the Action Plan for the implementation of priorities. Blockades of BiH institutions, the work of the FBiH Government in a technical mandate, and the questioning of the distribution of competences by the Republic of Srpska, led to a setback when it comes to legal certainty in terms of the division of competences.

Instead of improving coordination there are increasingly present initiatives to restore competence, especially in the case of the Republic of Srpska and a series of conclusions of the National Assembly of the Republic of Srpska in the direction of returning competence to the entity level, but also contesting the competence and decisions of BiH institutions, where the challenge of jurisdiction and decisions of the Constitutional Court of Bosnia and Herzegovina is particularly highlighted.

b) [Introduce a substitution clause to allow the country, after accession, to temporarily exercise the competences of other levels of government in order to prevent and eliminate violations of the EU law;](#)

The complex constitutional structure and frequent disputes about the distribution of competences between levels of government influence the harmonization of legislation with the *acquis* and its implementation in a large number of chapters.

Therefore, it was stated as one of the priorities that Bosnia and Herzegovina must ensure legal certainty about the distribution of competences at the levels of government and introduce a substitution clause that will allow the country to temporarily exercise the competences of other levels of government in order to prevent serious violations of EU law. The substitution clause has not been introduced, nor have preparatory activities been undertaken, so this condition remains unfulfilled.

c) [Guarantee the independence of the judiciary, including its independent institution \(HJPC\);](#)

The independence of the judiciary is not sufficiently guaranteed in order to protect it from all forms of politicization and pressure. The Constitution must expressly guarantee the independence of the judiciary and provide an explicit constitutional basis for the HJPC and the court system at the state level. However, the role of the HJPC is still not guaranteed or prescribed by the Constitution, and given that no activities were initiated to harmonize the Constitution in the previous period, this condition has not yet been met.

In 2019, the Ministry of Justice of Bosnia and Herzegovina formed a Working Group for drafting amendments to the Law on the HJPC, including representatives of relevant institutions. At its first meeting in January 2020, this Working Group decided to use the Legislative Initiative of the HJPC as a

starting document in its work on future amendments to the Law on the HJPC. However, as stated in the explanation of the Draft Law on Amendments to the Law on the HJPC that was sent later, "the process of making comprehensive amendments to the Law on the HJPC will definitely take some time", and due to the serious weakening of the integrity of the judiciary, and allegations from "Report of experts on issues of the rule of law in Bosnia and Herzegovina", it proved necessary to improve the legislative framework in a targeted manner and to propose certain amendments to this Act, through urgent changes, especially in connection with strengthening the integrity of the holders of judicial functions.

Although urgent, the amendments to the Law on the HJPC have not yet been adopted, and the first draft was prepared in September 2020. After a long procedure of multiple debates in the Parliament, and the initiative to enact the Law on the HJPC at the level of the Republic of Srpska and transfer jurisdiction to the entity level, the Proposal for the Law on Amendments to the Law on the HJPC of BiH was rejected by the House of Peoples. The Ministry of Justice subsequently referred it again to the procedure, with certain changes, and it was adopted by the Council of Ministers in May 2023.

However, these changes concern the issue of responsibility and integrity of the holders of judicial functions, and imply the creation and adoption of a new Law on the HJPC that would be aimed at systemic issues of appointment and independence of the judiciary, including the HJPC.

d) [Reforme the Constitutional Court, including resolving the issue of international judges and ensuring the implementation of its decisions;](#)

As stated in the Opinion, the Constitutional Court is the interpreter of the Constitution and the final authority in case of conflicts of jurisdiction between different levels of government. However, the lack of implementation of its decisions was emphasized, and the need to strengthen the professionalism and independence of the judges of the Constitutional Court, starting with the improvement of the criteria for appointment procedures.

The need to resolve the issue of international judges at the Constitutional Court was particularly emphasized, but this criterion was set very generally and was even used by certain government representatives as a basis for challenging the legitimacy of the Constitutional Court, although the Opinion states that its legitimacy must be recognized by all bodies as would ensure permanent compliance with its decisions. So far, no activities have been carried out in this field.

Instead, the authorities of the Republic of Srpska in the previous period made efforts to challenge and even abolish the jurisdiction of the Constitutional Court, especially decisions related to state property, and boycott the appointment of representatives to the Constitutional Court, which culminated in the initiative and adoption of the so-called Law on the Non-Enforcement of the Decisions of the Constitutional Court of BiH in the Republic of Srpska, according to which the decisions of the Constitutional Court of BiH would no longer be applied in the territory of this entity.

At the same session on June 27, 2023, a resolution was adopted according to which the National Assembly of the Republic of Srpska mandates the Government of the Republic of Srpska to submit to it a Draft Law on Amendments to the Criminal Code of the Republic of Srpska, which will prescribe a special criminal offense of acting contrary to the provisions of the Law on Non-Enforcement of the Decisions of the Constitutional Court of Bosnia and Herzegovina. In addition, increasingly strong political

pressures are visible in the process of appointing judges of the Constitutional Court, which was particularly noticeable in the examples of the ongoing process of appointing judges from the FBiH, where the functioning of the coalition at the FBiH level was also called into question due to the insistence on submitting the name of only one candidate for consideration, which appointment is promoted by HDZ.

Furthermore, National Assembly of the Republic of Srpska adopted a decision on confirming the statement of the member of the BiH Presidency from the Republic of Srpska, according to which the Conclusion for the adoption of the Action Plan for fulfilling 14 key priorities from the Opinion of the European Commission on BiH's Application for membership in the European Union, was adopted without consensus at the sixth regular session of the BiH Presidency, held on June 21, and is very harmful to the vital interests of the Republic of Srpska.

In the conclusions of the National Assembly of the RS, it was stated that *"The National Assembly demands that, within the 14 priorities set by the EU, the issue of the reform of the Constitutional Court of Bosnia and Herzegovina, i.e. the departure of foreign judges, should be resolved as a matter of priority and urgently, and that the Law on the Constitutional Court of Bosnia and Herzegovina should be included in the reform"*, and that the National Assembly of the Republic of Srpska asks all its elected representatives not to participate in discussions on solving any of the other EU priorities until these two previously mentioned priorities are solved.

Apart from the representatives from the RS, this attitude regarding the "departure" of foreign judges from the Constitutional Court is also supported by the representatives of HDZ BiH. Therefore, not only is there a complete setback when it comes to fulfilling this priority, but the issues of the Constitutional Court reform are being used to block the implementation of the other 14 priorities.

e) Guarantee legal certainty, including through the establishment of a judicial body that would be entrusted with ensuring consistent interpretation of law throughout Bosnia and Herzegovina;

This priority related to the fact that Bosnia and Herzegovina does not have a supreme court at the state level, which should ensure the conformity and consistency of judicial practice. Currently, there are panels for harmonization of court practice in civil, criminal and administrative matters, which are composed of representatives of the Court of Bosnia and Herzegovina, the Supreme Court of FBiH, the Supreme Court of the Republic of Srpska and the Appellate Court of the Brčko District of Bosnia and Herzegovina. The panels should meet quarterly, but they meet only at the initiative of international organizations and are convened through the Center for Court Documentation of the HJPC of Bosnia and Herzegovina, as the coordinator of activities.

The Law on the Courts of Bosnia and Herzegovina, although proposed by the Ministry of Justice in November 2022, has not yet been adopted. Even though it represents progress in terms of defining the competence of the Supreme Court and fulfilling this priority, certain provisions may lead to doubt in their application and limit the competence of the Court of Bosnia and Herzegovina in terms of certain criminal offences, primarily in the field of terrorism, human trafficking and sexual exploitation of women and children, illicit drug trade, illegal arms trafficking, money laundering, corruption, forgery of means of payment, computer and organized crime established by the laws of the Federation of Bosnia and Herzegovina, Republic of Srpska and Brčko District of Bosnia and Herzegovina.

f) Ensure equality and non-discrimination of citizens, especially the treatment according to the judgment of the European Court of Human Rights in the Sejdić and Finci case;

No activities have been undertaken by the authorities in BiH to introduce changes to the constitution, which would ensure equality and non-discrimination of citizens. On election night, October 2, 2023, the High Representative imposed changes to both the Election Law and the FBiH Constitution.

The decision was explained in such a way that the amendments to the Constitution change the way of appointing and electing the president and two vice-presidents of the Federation, increase the number of delegates in the House of Peoples of the Federal Parliament, introduce more precise control and process of acting according to the vital national interest, prevent blocking of the appointment of judges of the Constitutional Court, and give citizens and young people a greater opportunity to participate in the Parliament, regardless of constitutive status.

However, in the post-election process of government formation, it was shown that the imposed changes did not prevent the possibility of blockages in decision-making and the appointment of the Government (which led to new decisions by the High Representative and suspension of the Constitution in order to appoint the FBiH Government), while the method of distribution of mandates for the House of Peoples contested from the aspect of representativeness, and the issues of discrimination and implementation of the relevant judgments of the Constitutional Court of Bosnia and Herzegovina and the European Court of Human Rights, including Sejdić-Finci, have not yet been addressed. Considering the shortcomings and uneven approach, it can be stated that this priority has not been fulfilled.

g) Ensure that all administrative bodies responsible for the implementation of the acquis are based solely on professionalism and that the right of veto in the decision-making process is removed, in accordance with the acquis;

The composition of certain administrative bodies and their decisions-making is based on the criteria of national affiliation, which calls into question the implementation of the EU acquis. The right of veto based on nationality can also affect the work of the Parliament and the legislative assemblies of the entities. In general, the complete public administration in BiH is still not depoliticized and professional, it is not based on the principles of merit and is subject to political interventions.

Therefore, it is still not ensured that all administrative bodies entrusted with the implementation of EU legal acquis are based on these principles. Veto rights are still present in the decision-making process on all important issues, so it can be said that this priority has not been fulfilled and no steps have been taken towards its immediate fulfillment.

FULLFILLED: 0

5. TAKE CONCRETE STEPS TO PROMOTE AN ENVIRONMENT CONVENIENT FOR RECONCILIATION TO OVERCOME THE LEGACY OF WAR.

This recommendation is general and the evaluation of its implementation is therefore difficult to carry out, because it does not provide concrete steps, while the overall political situation and the attitude of the governing structures towards the events of the past does not give the right to consider this recommendation fulfilled.

After the adoption of the Revised Strategy for war crimes cases, adopted in September 2020, the aim of which is to improve the processing of war crimes cases in the courts and prosecutor's offices in Bosnia and Herzegovina through the appropriate mechanisms, especially through the appropriate distribution of cases between the judiciary at the level BiH, entities and Brčko District of BiH, and above all to ensure more efficient processing of the most complex and priority war crimes cases within the set deadlines, no significant progress was recorded in the adoption of this priority.

All relevant reports, including the OSCE and Human Rights Watch, indicate that the processing of all remaining war crimes cases will not be completed within the stipulated time frame and that progress is still slow. *"Almost 500 cases of war crimes, which relate to 4,000 suspects, have yet to come before the courts"*, states the HRW report, while the report of TRIAL International, "Vive žene" and the Global Fund for Survivors state that BiH has still not ensured adequate and effective compensation for surviving victims of sexual violence in the conflict due to an inadequate legal framework, and only about 1,000 of the estimated 20,000 survivors received some form of compensation.

Certain progress was achieved at the level of Brčko District, where the Law on Civilian Victims of War was adopted, establishing the rights of victims and recognizing children born as a result of wartime sexual violence. The FBiH Government also adopted the Draft Law on the Protection of Civilian Victims of War, which establishes the rights of civilian victims of war, such as personal disability allowance, monthly personal cash income, care allowance and assistance from another person, but it is still not adopted by the Parliament.

Also, as far as reconciliation is concerned, there are still no policies at the state level to deal with the legacy of the past, nor is there a state strategy on transitional justice. When it comes to the political environment, there is no noticeable progress in this regard, especially considering the increasingly frequent practice of denying crimes, inciting religious and national hatred, threatening secession, etc., which does not in any way lead to the improvement of an environment suitable for reconciliation. Political leaders continue to engage in historical revisionism, including denial of genocide and glorification of war criminals, challenging established facts and the independence or impartiality of international and domestic courts.

In July 2021, the High Representative made a decision related to amendments to the Criminal Code of Bosnia and Herzegovina, which prohibits and punishes the denial of genocide. Although some studies indicate that after the adoption of this decision, a reduction in denial of genocide was recorded through the media and social networks³, on the other hand, the application of these provisions in terms of processing cases of denial of genocide is absent, partly due to the very way in which these criminal acts were defined.⁴

³ <https://detektor.ba/2021/08/03/smanjeno-negiranje-genocida-u-medijima-i-na-twitteru-nakon-inzkove-odluke/>

⁴ <https://detektor.ba/2023/02/22/kako-su-tuzioci-odbacili-27-prijava-za-negiranje-genocida-i-velicanje-zlocinaca/?lang=en>

FULLFILLED: 0

The Rule of Law

PRIORITY		COMPLETED	
The Rule of Law	6	Improve the functioning of the judiciary through the adoption of new laws on the High Judicial and Prosecutorial Council and the courts of BiH in accordance with European standards.	0 ▶
	7	Strengthen the prevention and fight against corruption and organized crime, including against money laundering and terrorism, primarily through:	0 ▶
	a)	adopting and implementing regulations on conflict of interest and protection of whistleblowers;	▶
	b)	ensuring the effective functioning and coordination of bodies for the fight against corruption;	▶
	c)	harmonizing legislation and capacity building for public procurement;	▲
	d)	ensuring effective cooperation between law enforcement bodies and prosecutor's offices;	▶
	e)	demonstrating progress in achieving the results of proactive investigations, confirmed indictments, prosecutions and final convictions in cases of organized crime and corruption, including those at a high level;	▶
	f)	depoliticizing and restructuring of public companies and ensuring the transparency of the privatization process.	▶
8	Ensure effective coordination of border management and capacities for migration management at all levels and ensure the functioning of the asylum system.	1/2 ▲	

6. IMPROVE THE FUNCTIONING OF THE JUDICIARY THROUGH THE ADOPTION OF NEW LAWS ON THE HIGH JUDICIAL AND PROSECUTION COUNCIL AND COURTS OF BIH IN ACCORDANCE WITH EUROPEAN STANDARDS.

In 2019, the Ministry of Justice of Bosnia and Herzegovina formed a Working Group for drafting amendments to the Law on the HJPC, which included representatives of relevant institutions. At its first meeting in January 2020, this Working Group decided to use the Legislative Initiative of the HJPC as a starting document in its work on future amendments to the Law on the HJPC.

However, as stated in the explanation of the Draft Law on Amendments to the Law on the HJPC, which was sent later, "the process of making comprehensive amendments to the Law on the HJPC will definitely take a long time",⁵ and due to the serious weakening of the integrity of the judiciary and

⁵ <https://www.ekonsultacije.gov.ba/legislationactivities/downloaddocument?documentId=1014125>

allegations from the "Expert Report on the Rule of Law Issues in BiH", it proved necessary to improve the legislative framework in a targeted manner and to propose certain amendments to this Law, through urgent changes, especially in connection with strengthening the integrity of the holders of judicial functions.

In September 2020, the working group prepared a draft of the Law on Amendments to the Law on the HJPC, which deals with four issues, namely conflict of interest and transparency, disciplinary procedures for judges and prosecutors, judicial review of HJPC decisions and dismissal of HJPC members. The proposed amendments also provide for an Integrity Unit within the Secretariat of the HJPC.

After collecting all opinions and suggestions, which were incorporated into the draft amendments, the Ministry of Justice of Bosnia and Herzegovina requested an opinion from the Venice Commission. According to the opinion, the establishment of a system of control of statements on property status and conflict of interest (Integrity Unit) is welcome, but the Draft Law itself should introduce more precise rules for its functional independence, composition and work, as well as the role of experts engaged in monitoring. According to the Venice Commission, the draft amendment in no way prevents the adoption of a comprehensive legal act on the HJPC that would be fully harmonized with international standards.

At the time of writing this report, the draft is in the process of being harmonized with the opinion and recommendations of the Venice Commission, and it is expected to be referred to the procedure. It foresees a deadline of one year for the adoption of a new, comprehensive Law on the HJPC, and does not deal with the key issues of appointment, composition of the HJPC and other aspects of ensuring the independence of the judiciary.

After a two-year procedure of adoption in the Parliament and harmonization, the Draft Law on Amendments to the Law on the HJPC was rejected by the House of Peoples of the Parliamentary Assembly of BiH in 2022, and those changes have not yet been adopted. The Ministry of Justice of BiH again prepared and submitted a draft of changes, however, the High Judicial and Prosecutorial Council raised the issue of publishing property records, one of the key mechanisms of checking accountability of holders of judicial functions in BiH, from which the resistance to the establishment of complete transparency in the process of monitoring the property records of judicial office holders function comes.

The Council of Ministers re-adopted the Draft in May 2023, but in the end, the mentioned changes, although they were once emphasized as urgent, were still not adopted, even after more than three years. Therefore, the Integrity Unit in the HJPC, which should be responsible for the implementation of provisions related to the integrity of holders of judicial functions, as well as members of the Council, and the control of property records, has not yet been established.

In addition, the appointment of the Integrity Unit to the Secretariat of the HJPC calls into question its independence and impartiality in relation to the members of the Council themselves, and the proposed changes still do not adequately resolve the issues of conflicts of interest and incompatibility with other jobs of judicial offices holders, as well as the status and independence of the Office of the Disciplinary Prosecutor, which is a prerequisite for ensuring the accountability of holders of judicial functions.

In addition, the proposed provisions still do not allow effective control of the assets and private interests of public office holders, given that, for example, they still leave the possibility of declaring assets to close relatives who are not part of the same household as the judicial office holders, and even allow the refusal of those for whom there is an obligation to submit property information to the office holder, which leaves a huge space for circumventing the provisions on property declaration. On the other hand, sanctions for untimely submission or knowingly submitting incorrect or incomplete information in property records are not adequately prescribed.

Furthermore, it is particularly controversial that the Council of Ministers, when adopting the Draft, made new changes that partially narrow the provisions on conflicts of interest for members of the Council, limit the range of information from the property registers that are published, and finally change the way of checking the data specified in the property registers. Because of all this, representatives of the international community reacted by sending a letter and warning about the problematic practice of "watering down" key reform laws in the procedure of their adoption.⁶

FULLFILLED: 0

**7. STRENGTHEN THE PREVENTION AND FIGHT AGAINST CORRUPTION AND ORGANIZED CRIME,
INCLUDING AGAINST MONEY LAUNDERING AND TERRORISM, PRIMARILY THROUGH:**

**a) adoption and implementation of regulations on conflict of interest and protection of
whistleblowers**

The new law on conflict of interest has not yet been adopted at the state level. The draft Law on Conflict of Interest in the Institutions of BiH, on which TI BiH also worked, and which received the support of international organizations, which was in the parliamentary procedure since 2017, was ultimately not adopted, due to the lack of support in the House of Peoples. After this, the Ministry of Justice repeatedly prepared preliminary drafts of this Law, most of which did not meet the minimum standards regarding the independence of the body for the implementation of the Law, the scope of persons, the scope of defined incompatibilities, and the level of sanctions.

In some cases, solutions that have been proposed are even worse than the existing provisions of the Law on Conflict of Interest that is currently in force. Due to public pressure, the international community, and above all the EU, which clearly determined that the proposed solutions do not comply with the required standards, the Ministry of Justice again proposed the new preliminary draft, which was submitted to public consultations in May 2023. This preliminary draft represents an improvement compared to earlier proposals of the Ministry of Justice, but still leaves an open question of the status of the Commission for its implementation, as well as the discretion in determining sanctions for violations of the law.

⁶ <https://www.oslobodjenje.ba/dosjei/teme/video-politika-i-pravo-ne-smiju-skupa-sta-ce-biti-sa-zakonom-o-vstv-u-868400>

However, the most important test of the draft itself will certainly be when being adopted by the Council of Ministers, which in most cases adopts drafts with significant changes, and then by the Parliamentary Assembly, where there is a danger of amendment action in the direction of weakening the proposed mechanisms.

At the level of the Federation of BiH, the Law on Conflict of Interest has not been applied since 2013. The Government of FBiH finally submitted, in August 2022, the Draft of the new Law on Conflict of Interest, which was created in 2019, and which meets all basic standards and criteria. However, the new convocation of the FBiH Government in May 2023 withdrew all drafts and proposals of laws from the parliamentary procedure, for revision, including key anti-corruption laws that are part of 14 priorities. The same fate was experienced by the Proposal of the Law on the Protection of Corruption Whistleblowers, which had been waiting for adoption by the House of Peoples since 2018, and which the FBiH Government also referred to a further procedure in August 2022, only to be withdrawn along with other laws in May 2023.

For now, Brčko District of BiH is the only one with an adequate legal framework for preventing conflicts of interest, while solutions at other levels are unharmonized, inadequate, and their implementation is without results. In the same way, inefficiency has been shown in terms of the protection of corruption whistleblowers, who, even at the levels where there is legal protection, cannot receive timely and adequate protection from the institutions.

b) ensuring the effective functioning and coordination of anti-corruption bodies

Bodies for the prevention of corruption and the fight against corruption have been established at all levels of government in BiH, including all cantons. The functioning of these bodies is still not effective because their power and scope of work, except in the case of few cantons, are very limited. In addition, at the cantonal level, except in the case of Sarajevo Canton, Tuzla Canton and Una-Sana Canton, anti-corruption bodies are mostly established ad hoc, do not have professional and permanent staff, material resources, and are subordinate to the executive branch of government.

The central institution for the prevention of corruption in BiH is the Agency for the Prevention of Corruption and Coordination of the Fight Against Corruption (APIK), which has not demonstrated adequate capacities and efficiency in coordination with other bodies. At the same time, BiH still does not have an adopted Strategy for the fight against corruption, which has been waiting for adoption for more than two years, and which was supposed to be implemented in the period 2020-2024. Obstructions in the adoption of the Strategy led to a three-year vacuum and a complete absence of any planned and strategic and therefore coordinated approach to the fight against corruption.

Namely, other levels of government, with the exception of the Republic of Srpska, whose strategic period certainly does not follow the state strategy, waited for the adoption of the Strategy at the BiH level in order to harmonize their strategic documents with it, and this led to a delay in the adoption of strategic plans at other levels of government as well.

c) harmonization of legislation and strengthening of capacity for public procurement

The adoption of the Law on Amendments to the Law on Public Procurement in August 2022 was presented as one of the rare steps towards fulfilling the priorities set before BiH in the framework of EU

integration. The amendments were adopted after a multi-year procedure, but also with significant changes compared to the original version that the Working Group prepared back in 2017. Namely, during the consideration of the amendments by the Council of Ministers, the Draft underwent multiple changes, and although it represents progress in terms of transparency and prevention of conflicts of interest, provisions related to strengthening the supervision and competence of the Public Procurement Agency, as well as sanctions, were omitted during its adoption. Given that this priority is directly related to the capacities themselves, this segment of the priority can be considered only partially fulfilled.

d) ensuring effective cooperation between law enforcement bodies and prosecutor's offices

Substantial cooperation between law enforcement agencies is improved. As stated in the European Commission's report for BiH in 2022, "there are systemic deficiencies in operational cooperation between law enforcement agencies in the fight against organized crime, due to inconsistent criminal legislation, weak institutional coordination and very limited exchange of intelligence data".

There are serious concerns about the influence of organized crime, not just political influence, on law enforcement agencies. This was especially evident during the process of appointing the heads of key security agencies after the 2022 elections.

In May 2023, BiH finally established formal cooperation with Europol, after several years of obstruction, and the Rulebook on the Work and Operational Cooperation of the joint Contact Point for Bosnia and Herzegovina for cooperation with the European Police Office was signed. Obstructions have lasted since 2016, when the agreement on cooperation with Europol was signed, due to the lack of agreement regarding which institution will be designated to represent BiH at this European police agency.

The authorities of the Republic of Srpska also refused to place the contact point in the Directorate for the Coordination of Police Bodies, where the contact office for cooperation with Interpol is also located, and a compromise was reached only in 2023, according to which the office will be in the Ministry of Security, and the first representative of BiH at Europol will be from the Ministry of Interior of the Republic of Srpska. The results of the establishment of formal cooperation, and the efficiency of BiH agencies within the framework of cooperation, will certainly be evaluated only in the following period, given that operationalization and operational preparation are yet to come. However, the agreement has not yet been signed and cooperation with Eurojust has not been established.

When it comes to the internal cooperation of law enforcement agencies, activities to improve cooperation are mainly carried out through technical assistance projects financed by the EU and other international donors⁷. In addition, no progress has yet been achieved in terms of cooperation between law enforcement agencies and prosecutor's offices, especially in cases of high corruption. The lack of cooperation between law enforcement agencies and police bodies is constantly highlighted by

⁷ <https://eu4justice.ba/komponente-2/>

representatives of prosecution offices at all levels, as well as the very small number of reports they receive from police bodies.⁸

According to the data presented at the Annual Conference of Chief Prosecutors, "of all the law enforcement agencies, not one of them submitted a single report of high-level corruption to the Prosecutor's Office of Bosnia and Herzegovina"⁹ On the other hand, there is a noticeable increasing pressure on law enforcement agencies within the framework of the investigations they conduct, which is the result of increased political influence on the management and personnel of the agencies, which is then reflected through obstructions in the conduct of investigations and actions based on findings in high corruption cases.¹⁰

e) demonstrating progress in achieving the results of proactive investigations, confirmed indictments, prosecutions and final convictions in cases of organized crime and corruption, including those at a high level

In Bosnia and Herzegovina, no progress has been made in this segment, given that statistical data on the work of prosecutor's offices and courts show that no progress has been recorded in the total number of indictments and verdicts for criminal acts of corruption, especially when it comes to cases of high corruption. During 2022, a smaller number of indictments were recorded compared to 2021, and on the other hand, out of a total of 17 indictments for high corruption (as defined by the HJPC), none was confirmed during 2022.

Two-thirds of corruption complaints are resolved by orders not to conduct an investigation, which is a direct consequence of inappropriate prosecutorial discretion. Initiation of investigations is often carried out for the purpose of political calculations, and the selective approach to the cases to be prosecuted has been visible for years, which is a direct consequence of political influences and captivity of the judiciary by politics.

The data show that mostly fines or suspended sentences are imposed before the BiH judiciary for criminal acts of corruption, while prison sentences were imposed in only 29.6% of cases, and in the whole of BiH, only 4 final court verdicts were passed last year, in which the perpetrators were imposed prison sentences. The reason for this state of affairs can certainly be sought in the Prosecutor's Office of BiH, which, after the scandal surrounding the appointment of the Chief Prosecutor of BiH and the arrival of the Deputy Chief Prosecutor on the US blacklist, precisely because of suspicions of corruption, lost public confidence in its ability to adequately fight corruption. In support of these trends is the fact that the number of indictments filed is lower in 2022 compared to 2021, and that decline can be mainly attributed to the work of the Prosecutor's Offices in the territory of the Federation of BiH, which filed 14.5% fewer indictments for corruption.

At the same time, 124 judgments were passed in this entity in which the accused were found guilty, and in which a suspended sentence was determined instead of a sentence, which makes up 75% of the total

⁸ <https://detektor.ba/2023/03/22/sjednica-vstv-a-glavni-tuzioci-lose-rezultate-privisali-policiji/>

⁹ <https://www.fokus.ba/vijesti/bih/sattler-broj-presuda-u-predmetima-visokoq-profila-i-dalje-alarmantno-nizak/2595201/>

¹⁰ <https://www.fokus.ba/vijesti/bih/borbu-protiv-kriminala-i-korupcije-otezavaju-i-blokade-istraga-politicki-utjecaj-i-pristrasne-sudije/2325965/>

number of cases that ended with judgments in which the accused were found guilty. For the sake of comparison, at the level of Bosnia and Herzegovina, the number of established conditional sentences is 3, in the Republic of Srpska 6, while in Brcko there is only one such decision in 2022.¹¹

There are prosecutor's offices that do not conduct investigations or file indictments in corruption cases for years. Thus, Central Bosnia Cantonal Prosecutor's Office has been distinguished by poor results for years, and last year it had only one confirmed indictment for corruption. In the last eight years, only 4 final verdicts were passed in this canton in which the accused were declared guilty, but in which a suspended sentence was determined instead of a sentence, while 83% of corruption reports received by this Prosecutor's Office from 2015 to 2022 resulted in a decision not to implement or to suspend. The low level of efficiency was also shown by the Prosecutor's Office of Herzegovina-Neretva Canton, where the last prison sentence for the criminal offense of corruption was pronounced in 2019.

Finally, the judiciary in BiH has been facing serious corruption scandals within the judicial community for years, which is why the public's trust in the readiness to prosecute corruption is almost non-existent.

f) depoliticization and restructuring of public companies and ensuring the transparency of the privatization process.

Public enterprises remain under the control of political parties and still need management reform and restructuring.

Entity laws on public companies have not been changed, and they have not been improved in terms of ensuring the independence of management, depoliticization, transparency of employment and operations. Appointment and employment in public enterprises are still carried out on the basis of party and inter-party distribution.

Due diligence and restructuring projects were carried out mainly at the initiative of the international community, sporadically, and did not produce results in the direction of reducing the burden, improving corporate governance and reducing accumulated debts.

The management of public companies, including management and supervisory boards, and directors of companies, in a large number of cases also perform functions in the executive and legislative power, as shown by the registers of public companies and public office holders of TI BiH.¹²

Despite its great importance for the national economy, the operations of public companies in BiH are faced with a series of challenges when it comes to business success and the delivery of services to citizens and the business community. Most public companies regularly generate losses, while their

¹¹ <https://ti-bih.org/za-korupciju-naicesca-uslovna-kazna-bez-potvrdjenih-optuznica-za-visoku-korupciju-u-prosloj-qodini/>

¹² <https://transparentno.ba/transparentno.ba/> i https://registar.transparentno.ba/bs-Latn-BA/public_officials?page=1&rows=10

productivity is at the level of only 50 percent of the productivity of companies in the European Union. Estimates are that this poor performance of public companies reduces the gross social product by 3 percent compared to the potential.

Despite generous state subsidies and a privileged, often monopolistic, position on the market, the indebtedness of public companies is alarming. The collective debt of public companies amounts to about 26 percent of the gross national product of Bosnia and Herzegovina.

Despite these trends in the management of public enterprises, governments at all levels in BiH are not fully prepared to implement reform activities that would result in reorganization, better and more responsible operations of public enterprises, and ultimately, better delivery of products or services to citizens and the business community.¹³

In cooperation with the World Bank, entity governments should work on establishing centralized coordination units that would be responsible for controlling the operations of public enterprises. In the Republic of Srpska, a decision was made on the establishment of a system of supervision over public enterprises, which foresees that the supervision system will be established in the General Secretariat of the Government of the RS.

Through 6 phases, this unit should establish mechanisms for monitoring economic and financial indicators, analysis and recommendations to relevant ministries and supervised public enterprises, but in this phase, aggregate reporting on indicators of financial operations or implementation of public policies in state-owned enterprises is still not done. The FBiH government has not yet established this coordination unit.

FULLFILLED: 0

8. ENSURE EFFECTIVE COORDINATION OF BORDER MANAGEMENT AND MIGRATION MANAGEMENT CAPACITIES AT ALL LEVELS AND ENSURE FUNCTIONING OF THE ASYLUM SYSTEM.

Bosnia and Herzegovina has adopted the Strategy of Integrated Border Management in Bosnia and Herzegovina for the period 2019-2023. What remains is the adoption/definition of the National Coordination Center, which will facilitate the exchange of information between all law enforcement agencies.

In the previous period, some progress was made with regard to the adoption of the Strategy in the field of migration and asylum for the period 2021-2025, which was adopted by the Council of Ministers in December 2022. This strategy defines seven strategic goals, among which: improving the system of comprehensive management of migration and asylum policies, increasing the efficiency of state border control; more effective management of illegal migration on the territory of BiH, improvement of asylum system, more effective fight against migrant smuggling and human trafficking, support for legal

¹³ *Analysis of policies in the field of employment in public enterprises in BiH, Transparency International BiH, 2023.*

migration and integration of foreigners legally residing in BiH, and strengthening coordination mechanisms in the management of migration and asylum.¹⁴

According to the **Information on the situation in the field of migration in BiH for 2022**, a more effective system of coordination and management of migration was established through strengthening the institutions of BiH, and two years after its adoption, 75 percent of the total number of planned activities from the document Plan of Measures and Activities for Effective Management of the Migrant Crisis are implemented in BiH.

However, in 2022, the number of migrants who illegally entered the territory of Bosnia and Herzegovina increased, compared to 2021, while at the same time the number of asylum requests remained at the same level, as reported by the Council of Ministers.¹⁵ Also, the European Commission's Report for BiH from 2022, despite the fact that there are certain strategic documents, emphasizes the inconsistency of the legal framework and institutional cooperation, which is why implementation is often unsatisfactory and uneven. In addition, the issue of equal distribution in migration management between the entities and all cantons, in order to ensure more efficient access to the procedures for seeking asylum, remains.

FULLFILLED: 1/2

Fundamental Rights

PRIORITY		COMPLETED
Fundamental rights	9	Strengthen the protection of the rights of all citizens, especially by ensuring the implementation of laws on non-discrimination and gender equality. 0 ▶
	10	Ensure the right to life and the prohibition of torture, in particular by (a) abolishing the reference to the death penalty in the Constitution of the Republic of Srpska and (b) appointing a national mechanism for the prevention of torture and inhuman treatment. 1/2 ▶
	11	Ensure a stimulating environment for civil society, especially respecting European standards on freedom of association and freedom of assembly. 1/3 ▼
	12	Guarantee freedom of expression and media and protection of journalists, especially by (a) ensuring appropriate judicial processing of cases of threats and use of violence against journalists and media workers, and (b) ensuring the financial sustainability of the system of public broadcasting services. 0 ▼

¹⁴ <https://www.slobodnaevropa.org/a/bih-vijeci-ministara-migracije/32166133.html>

¹⁵ <https://www.bhrt.ba/upravljanje-migracijama-ostaje-me%C4%91u-14-klju%C4%8Dnih-prioriteta-na-evropskom-putu-bosne-i-hercegovine>

13

Improve the protection and inclusion of vulnerable groups, especially persons with disabilities, children, LGBTI persons, members of the Roma community, detainees, migrants and asylum seekers, as well as displaced persons and refugees in order to close Annex VII of the Dayton Peace Agreement.

0 ▶

9. STRENGTHEN THE PROTECTION OF THE RIGHTS OF ALL CITIZENS, ESPECIALLY BY ENSURING THE IMPLEMENTATION OF THE LAW ON NON-DISCRIMINATION AND GENDER EQUALITY.

Although the Law on Prohibition of Discrimination in BiH has been adopted, in accordance with EU standards, it is not applied efficiently and equally, and there are no comprehensive statistical data on violations of this Law. The institution of the Ombudsman for Human Rights of Bosnia and Herzegovina keeps records of certain cases, but the data show that discrimination is being reported less, even though it is more pronounced, especially in the workplace and in education. Also, since 2019, BiH has been without a strategic document for the fight against discrimination and the protection of human rights, which represents a major obstacle in strengthening the protection of the rights of all citizens.

In order to fulfill this priority, it is necessary to reform the Institution of the Ombudsman for Human Rights of BiH, however, no steps have been taken to achieve this. The law has not yet been amended to ensure an adequate definition of hate speech at all levels of government.

The regulations guaranteeing gender equality in BiH are quite aligned with European standards, but nothing has been done when it comes to their implementation in practice. Only the laws in the Republic of Srpska are harmonized with the Istanbul Convention, and at the FBiH level, both houses of the Parliament of FBiH, in April and July 2022 adopted the Draft Law on Amendments to the FBiH Criminal Code, but the procedure has not yet been completed.

When it comes to the strategic framework, in April 2022 the Council of Ministers adopted the Action Plan for the social inclusion of Roma for the period 2021-2025. The implementation of the Action Plan will be monitored by the Ministry of Human Rights and Refugees of BiH and the Roma Committee within the Council of Ministers of BiH.

Also, ethnic segregation in schools, known as "two schools under one roof", is still present in Herzegovina-Neretva (HNK) and Central Bosnia (SBK) Cantons.

FULLFILLED: 0

10. ENSURE THE RIGHT TO LIFE AND THE PROHIBITION OF TORTURE, IN PARTICULAR (A) ABOLISHING THE DEATH PENALTY IN THE CONSTITUTION OF THE REPUBLIC OF SRPSKA AND (B) APPOINTING A NATIONAL MECHANISM FOR THE PREVENTION OF TORTURE AND INHUMAN TREATMENT

A) In October 2019, the Constitutional Court of BiH abolished the provision of the Constitution of the Republic of Srpska on the existence of the death penalty, and ordered its deletion. However, an amendment to the Constitution that would delete this provision was never put on the agenda of the National Assembly of the Republic of Srpska, so the provision was not formally deleted from the Constitution of the Republic of Srpska.

B) In order to place the role of the National Preventive Mechanism Against Torture and Ill-Treatment under the authority of the Institution of Ombudsman for Human Rights in BiH, it is necessary to amend the law on this institution. The law has not yet been amended, although it is in the parliamentary procedure, and was adopted in the first reading.

FULLFILLED: 1/2

11. ENSURE AN ENCOURAGING ENVIRONMENT FOR CIVIL SOCIETY, ESPECIALLY RESPECTING EUROPEAN STANDARDS ON FREEDOM OF ASSOCIATION AND FREEDOM OF ASSEMBLY.

The legal framework that regulates freedom of association is generally in line with European standards and is being applied. The problem with transparency of funding of civil society organizations has not yet been addressed, and there is no strategic framework that would regulate the criteria and conditions for funding. Representatives of civil society, activists and the media are still not protected from various attacks and pressure from government representatives.

Regardless of the legal framework in force, civil society in BiH does not have a stimulating environment for its work. Almost no progress has been made in the area of ensuring an encouraging environment for the development and operation of civil society in Bosnia and Herzegovina. There is still no functional database of registered civil society organizations (CSOs) with qualification and updated early data. Of particular concern are the initiatives to further limit the activities of civil society in the form of the Draft Law on the Special Register and Publicity of the Work of Non-Professional Organizations, which was adopted by the Government of the Republic of Srpska.

This draft, in addition to providing for the creation of a special register of organizations that are financed from foreign sources, characterizes them as agents of foreign influence, and provisions directly limiting the range of activities are also proposed, i.e. prohibiting certain types of activities of organizations, such as activities that act towards decision-makers in order to adopt or change regulations and policies.

The proposed law also gives great power to the Ministry of Justice, in terms of supervising the work of organizations as well as sanctions available, which may result in the prohibition of work of certain organizations.

European standards are still not implemented when it comes to the protection of freedom of assembly, especially in the Republic of Srpska where activists who are prevented from gathering peacefully are threatened with prosecution. In the previous period, this resulted in banning certain activities, such as events on the rights of LGBTIQ communities, which culminated in a physical attack on activists by hooligans in Banja Luka.

Laws on freedom of assembly are still not harmonized at different levels of government. During 2020 only Brcko District adopted a new Law on Freedom of Assembly that is fully in line with European

standards. At all other levels of government, the grounds for limiting gatherings and provisions on the responsibility of organizers of gatherings are not aligned with European standards.

FULLFILLED: 1/3

12. GUARANTEE FREEDOM OF EXPRESSION, MEDIA AND PROTECTION OF JOURNALISTS, ESPECIALLY THROUGH (A) ENSURING APPROPRIATE JUDICIAL PROCESSING OF THREATS AND USE OF VIOLENCE AGAINST JOURNALISTS AND MEDIA WORKERS, AND (B) ENSURING THE FINANCIAL SUSTAINABILITY OF THE PUBLIC BROADCASTING SERVICES.

A) In the previous period, no additional activities were carried out to protect journalists and media freedoms, and there was a deterioration in this segment, both in terms of the frequency of attacks and threats to journalists, especially by the authorities, and in the form of proposing laws that directly limit freedom of speech and expression. In the Republic of Srpska, in March 2023, the National Assembly adopted the Draft Law on Amendments to the Criminal Code of the Republic of Srpska, which proposed the introduction of criminal offenses against reputation and honor, i.e. the re-criminalization of defamation and insults, as well as the introduction of new criminal offenses that deal with the presentation of family circumstances, publication of other people's writings, etc. Fines of up to EUR 60,000 are prescribed for these crimes.

Despite the criticism of the professional community and international institutions, at the very moment of determining these changes by the Government of the RS, the National Assembly of the Republic of Srpska adopted this draft. In addition, the presentation of this initiative by the highest officials in the Republic of Srpska was accompanied by a series of insults against journalists and civil societies who were active in criticizing the criminalization of defamation and insult.¹⁶ This kind of rhetoric by the authorities in the Republic of Srpska directly contributed to attacks on journalists and their property.¹⁷

In addition to this, the Ministry of Internal Affairs of Sarajevo Canton has proposed a new Law on offenses against public order and peace in the area of Sarajevo Canton, which introduces new offenses that also go in the direction of limiting freedom of speech, under the auspices of the fight against disinformation and fake news.

This law expands the definition of a public place to the internet and social networks and introduces penalties for presenting or spreading false news as well as for "disparaging state authorities", which due to arbitrary interpretations could lead to suppression of freedom of speech and pressure on citizens, media and civil societies who speak critically about the work of the public sector.

Also, the introduction of high fines for "spreading fake news", which can go up to BAM 15,000 for legal entities and BAM 2,100 for responsible persons, could lead to censorship and self-censorship of the media, which expose themselves to the risk of initiating numerous misdemeanor proceedings. In addition, there is a danger of arbitrary interpretation of these provisions by the police, who will be given the authority to determine which news is false and "causes panic among citizens", and especially which hinders the implementation of the decisions of public authorities.

¹⁶ <https://srpskainfo.com/onaj-vukelic-i-neke-druge-spodobe-dodik-ovako-naziva-novinare-i-istovremeno-uredjuje-oblast-klevete-u-srpskoj-video-foto/>

¹⁷ <https://mondo.ba/Info/Crna-hronika/a1206068/Napad-na-novinare-Moracu-i-Trifunovica.html>

Adequate activities are still not carried out to ensure police protection of journalists in case of threats, and the threats themselves are not processed by the competent authorities. In 2022, the trend of increasing attacks on journalists, as well as threats to media freedom and safety of journalists, continued. The Association of BiH Journalists and the Helpline for Journalists have registered 79 cases of violations of media freedom, 85 violations of freedom of expression and safety of journalists, as well as 35 cases of online violence against journalists.

Behind the mentioned threats and attacks, in 80% of cases are politicians, businessmen connected with them, public and academic workers. Impunity for attacks on journalists is extremely high - 20 cases of violence against media workers were resolved in their favor in 2022, which is only 25.3% of cases.¹⁸

B) The new law on public broadcasting service has not been adopted. The issue of financing BHRT has not yet been resolved, and the obstructions related to the distribution of RTV fees are still in force. On the other hand, the new convocation of the Council of Ministers announced, in the coming period, a new law on the Public Broadcasting System, noting that this law will enable the introduction of new radio and television channels into the system of public broadcasters. As announced, the Ministry of Communications and Transport of Bosnia and Herzegovina will work on drafting the law.

FULLFILLED: 0

13. IMPROVE THE PROTECTION AND INCLUSION OF VULNERABLE GROUPS, ESPECIALLY PEOPLE WITH DISABILITIES, CHILDREN, LGBTI PERSONS, MEMBERS OF THE ROMA COMMUNITY, DETAINEES, MIGRANTS AND ASYLUM SEEKERS, AS WELL AS DISPLACED PERSONS AND REFUGEES WITH THE GOAL OF CLOSING ANNEX VII OF THE DAYTON PEACE AGREEMENT.

Certain progress regarding the strategic framework for the advancement of the rights of LGBTI persons was made with the adoption of the Action Plan for the Advancement of the Human Rights of LGBTI Persons in BiH for the period 2021-2024, which was adopted by the Council of Ministers at the end of July 2022, after 2 years of waiting. In April 2022, the Council of Ministers adopted the Action Plan for the social inclusion of Roma for the period 2021-2025.

In the past period, there was no significant progress regarding the rights and position of persons with disabilities in Bosnia and Herzegovina. The strategy for improving the rights and position of persons with disabilities in FBiH (2016-2021) has expired, a new one has not been adopted, and the Report on the fifth annual implementation of this strategy concluded that no significant progress has been made in any area in terms of ensuring equal conditions and inclusion. In the Republic of Srpska, the Strategy on Improving the Social Position of Persons with Disabilities 2017-2026 is in force, but there is no available data on its implementation.

With the adoption of the Revised Strategy of Bosnia and Herzegovina for the implementation of Annex VII of the Dayton Peace Agreement, strategic goals have been defined in the direction of implementing

¹⁸ https://eu-monitoring.ba/site/wp-content/uploads/2023/04/paper-67_Layout-1-1.pdf

the provisions of this Annex, but administrative, legal and political problems that prevent the successful completion of return still remain.¹⁹

Also, neither a strategy on the protection of the rights of migrants and asylum seekers, nor a strategy on the management of the migrant crisis in BiH was adopted. In addition to the fact that no adequate system of documenting migrants and asylum seekers exist, there is no adequate protection of their rights, as well as of particularly vulnerable subgroups such as unaccompanied minors.

FULLFILLED: 0

Public Administration Reform

PRIORITY		COMPLETED
Public administration reform	14	1/3 ▶

14. COMPLETE THE NECESSARY STEPS IN PUBLIC ADMINISTRATION REFORM WITH THE OBJECTIVE OF IMPROVING THE OVERALL FUNCTIONING OF PUBLIC ADMINISTRATION BY ENSURING A PROFESSIONAL AND DEPOLITICIZED CIVIL SERVICE AND A COORDINATED APPROACH IN THE CREATION OF POLICIES THROUGHOUT THE COUNTRY.

Public administration in Bosnia and Herzegovina and the reform of administration are facing serious challenges. According to the report on the implementation of the Action Plan of the Strategic Framework for Public Administration Reform in BiH, *"the period of drafting and adopting key strategic documents - the Strategic Framework for Public Administration Reform 2018-2022, whose validity period has been extended until 2027, is too long, and long-term agreements on method of solving political and technical coordination and non-functioning of the Public Administration Reform Fund resulted in the postponement of the implementation of reform measures and modest results at the end of 2022."*

¹⁹ *Ibid.*

According to the Report, the two-year implementation of the Action Plan for Public Administration Reform resulted in the implementation of only 14% of the planned activities. The greatest progress was achieved in the area of Public Finance Management, where the percentage of fulfillment is 100%, but only two activities are planned - the adoption of strategic documents at all levels and creation of a nationwide PFM strategy.

In this sense, this progress was achieved by the adoption of the Strategy for the Improvement of Public Finance Management for the period 2021-2025 at the level of BiH, as well as at the level of FBiH and RS. Institutions of Brcko District implemented 33.3% of the activities, 33.3% was implemented in the Republic of Srpska, 27.2% in the FBiH, and state institutions fully completed 24.2% of the activities. In the area of policy making and coordination, the greatest progress was achieved by the Republic of Srpska - 21.05 implemented activities, while progress at other levels was - 10.5%. The least progress was achieved in the areas of Responsibility and Service Provision.²⁰

The delay in the adoption of strategic documents is also visible in the case of the Federation of Bosnia and Herzegovina, which in April 2022 adopted the communication strategy of the public administration reform process and the accompanying action plan for the period 2021-2022.

The lack of political will to carry out reforms in the field of public administration is visible at all levels. This is also visible through the lack of funds for the implementation of planned measures, and the constant reliance on donor funds. Despite the EU's recommendations, a political decision-making body that will manage the reforms has not been established, while the capacities and influence of the Office of the Coordinator for Public Administration Reform are insufficient.

No progress has been made in ensuring the professionalization and depoliticization of the civil service. Civil service laws are not harmonized and the human resources management system does not provide adequate mechanisms for ensuring accountability and detecting irregularities. The civil service system at all levels is still politicized, which directly affects merit in employment, the evaluation system and performance monitoring.

FULLFILLED: 1/3

²⁰ https://parco.gov.ba/wp-content/uploads/2023/04/Izvjestaj-o-implementaciji-APSORJU_nacrt.pdf

Conclusion

It is evident, from the aforementioned report, that four years after the issuance of the Opinion, only one out of 14 priorities has been fully realized, but in such a way that formal prerequisites for its fulfillment have been created, and it is about ensuring the proper functioning of the Parliamentary Committee for Stabilization and Association.

Not a single other priority from the Opinion was realized completely. Of particular concern is the lack of progress in the implementation of priorities in the area of democracy/functionality and the rule of law, which themselves are comprehensive and made up of several separate units.

A certain number of priorities were partially implemented, five of them. Legislative activity on the implementation of key priorities was hampered by systematic obstructions, efforts to avoid the purpose of enacting or changing laws, or in some cases even proposing solutions that represent a setback compared to the existing ones.

Taking into account the situation as a whole, it can be stated that the process of integration of Bosnia and Herzegovina into the EU has essentially stopped completely. If the fulfillment of the 14 priorities from the Opinion were to take place with this dynamic, the process could last for several decades.



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